

1 STUART C. CLARK (SBN 124152)
 2 clark@carrferrell.com
 3 CHRISTINE S. WATSON (SBN 218006)
 4 cwatson@carrferrell.com
 5 CARR & FERRELL LLP
 6 2200 Geng Road
 7 Palo Alto, California 94303
 8 Telephone: (650) 812-3400
 9 Facsimile: (650) 812-3444

10 Attorneys for Plaintiff
 11 PATRICK PIERCE

12
 13 UNITED STATES DISTRICT COURT
 14 NORTHERN DISTRICT OF CALIFORNIA
 15 SAN JOSE DIVISION

16 PATRICK PIERCE,

17 CASE NO. C08-01554 JF (HRL)

18 Plaintiff,

19 v.
 20
 21 **PIERCE'S EVIDENTIAL
 22 OBJECTIONS TO, AND
 23 MOTION TO STRIKE
 24 PORTIONS OF, DECLARATION
 25 OF GREG J. RICHARDSON,
 26 AND STATEMENTS IN WELLS
 27 FARGO'S MOVING PAPERS**

28 Date: June 27, 2008
 1 Time: 9.00 a.m.
 2 Place: Courtroom 3, 5th Floor
 3 Judge: Hon. Jeremy Fogel

29
 30 Plaintiff Patrick Pierce ("Pierce") hereby objects to the admissibility of the following
 31 portions of the declaration of Greg J. Richardson dated March 27, 2008 (the "Richardson
 32 Declaration"):

33 Objectionable Content

34 Grounds for Objection

35 Richardson Declaration, Paragraph 2: Allegation
 36 that Exhibit 1 is a true copy the Greater Bay
 37 Bancorp Change in Control Plan ("CIC Plan").

38 Lack of personal knowledge, and hearsay
 39 (Federal Rules of Evidence 602 and 802): There
 40 is no foundation laid upon which Mr.
 41 Richardson, as outside counsel for defendant,
 42 would have personal knowledge of the
 43 authenticity of defendant's internal corporate
 44 records. Further, the document is not made
 45 admissible as a hearsay exception under Rule
 46 803(6), because the referenced document is not
 47 a memorandum, report, etc. of acts, events,

| <u>Objectionable Content</u> | <u>Grounds for Objection</u> |
|---|--|
| Motion, 5:26-28: "Representation" by defendant contains statements with respect to alleged exhaustion of remedies under CIC Plan. | Statements purport to recite facts that are unsupported by any evidence. |
| Motion, 7:21-22: Statements with respect to alleged terms of CIC Plan. | Statements purport to recite facts relating to inadmissible exhibit to Richardson Declaration. |
| Motion, 8:7-10: Statements with respect to alleged terms of CIC Plan. | Statements purport to recite facts relating to inadmissible exhibit to Richardson Declaration. |
| Motion, 9:11-19: Statements with respect to alleged terms of CIC Plan. | Statements purport to recite facts relating to inadmissible exhibit to Richardson Declaration. |
| Motion, 10:12-18: Statements with respect to alleged terms of CIC Plan. | Statements purport to recite facts relating to inadmissible exhibit to Richardson Declaration. |

In addition, Pierce objects to the admissibility of the Greater Bay Bancorp Change in Control Plan on the grounds that it constitutes extrinsic evidence inadmissible on a motion under Rule 12(b)(6).

Pierce accordingly requests that the objectionable content be ordered stricken from the record.

Dated: June 6, 2008

CARR & FERRELL LLP



By:

STUART C. CLARK
CHRISTINE S. WATSON

Attorneys for Plaintiff
PATRICK PIERCE